

18869

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-202136

DATE: July 20, 1981

MATTER OF: Mark F. Jones - *[Request for]* Waiver of overpayments of
compensation *]*

- DIGEST: 1. After retirement, employee received a gross payment of \$1,364.80, representing an erroneous payment of regular salary for the pay period following his retirement. He also received an erroneous payment of \$272.96 for 16 additional hours of annual leave. Employee received Earnings and Leave Statements with the payments and he had duty to inquire as to correctness of payment of \$1,364.80 and did not. Thus, employee was not free from fault and request for waiver of \$1,364.80 is denied. Request for waiver of \$272.96 is granted because Earnings and Leave Statement showed 16 hours increase in annual leave and corresponding decrease in sick leave. Therefore, employee could have reasonably believed that this payment represented expected adjustment in his leave account.
2. Amount of employee's indebtedness for overpayment of pay is gross amount of pay rather than net amount of money received. While employee may not directly receive all monies earned, employer's withholding for Federal income tax or other purposes is made on behalf of employee and does not diminish amount of indebtedness for erroneous payment.
3. While there is no general statutory provision authorizing agencies to assess interest on delinquent accounts, courts have recognized such right as measure of damages for delay in payment of obligation. We have held that agencies may charge interest on overdue accounts only when (1) the rate of interest is not so high as to constitute a penalty, (2) interest is assessed only after proper notice of debt (including intent to charge interest) is given, and (3) debt itself is liquidated. 59 Comp. Gen. 359 (1980).

044635

115876

Where, as here, record shows that agency did not follow notice requirements, we will disallow agency's claim for interest on overpayment.

This decision is in response to an appeal by Mr. Mark F. Jones from our Claims Division settlement Z-2825732-121, November 26, 1980, denying his application for waiver of collection under 5 U.S.C. § 5584 of overpayments of compensation and annual leave totaling \$1,637.76, plus accrued interest.

After 30 years of Federal service, Mr. Jones retired on February 27, 1976 from his GS-15 position with the Energy Research and Development Administration (ERDA), now part of the Department of Energy (DOE). For the pay period ending March 13, 1976, he received a gross payment of \$6,295.14 which consisted of a proper payment for 289 hours of accrued annual leave (\$4,930.34) which he was due, and an erroneous payment of regular salary for the pay period following his retirement (\$1,364.80). For the pay period ending March 27, 1976, DOE erroneously issued a payment to him for 16 additional hours of annual leave, resulting in an overpayment in the gross amount of \$272.96. With both payments, Mr. Jones received an Earnings and Leave Statement showing the basis for the payment.

In July 1977, DOE first detected the overpayments. DOE mailed notices to Mr. Jones, but he did not receive them. Although Mr. Jones had moved twice since his retirement, his address could presumably have been found from the Federal retirement system. In any event, DOE's notice of the overpayments did not reach him until March 10, 1980. This notice consisted of a letter dated February 29, 1980, with enclosures, which sought \$1,637.76 for the two overpayments, plus accrued interest at 12%.

In appealing the Claims Division's denial, Mr. Jones does not dispute the fact that he received Earnings and Leave Statement #2727 which clearly shows on its face that it included the gross amount of \$1,364.80, as his regular salary for the pay period ending March 13, 1976. Mr. Jones retired on February 27, 1976, and the pay period

B-202136

in which he retired had ended on February 28, 1976. Furthermore, he does not dispute the fact that he also received Earnings and Leave Statement #2744 for the pay period ending March 27, 1976, which showed an increase of 16 hours annual leave and a decrease of 16 hours sick leave which resulted in a payment to him in the gross amount of \$272.96.

Mr. Jones first contends, however, that he believed the pay check for \$1,364.80 represented payment for compensation which was withheld in 1946 when he first was employed by the Federal Government, and that the check for \$272.96 represented an expected adjustment in his leave account which he verified by checking his leave statement when he received it. In the alternative, Mr. Jones contends that he is liable only for the net rather than the gross amount of the overpayment, and that, in any event, he is not liable for any interest.

The provision of law authorizing the waiver of claims of the United States against employees arising out of erroneous payments of pay, 5 U.S.C. § 5584, permits such waivers only when the collection of the erroneous payments would be against equity and good conscience and not in the best interests of the United States and only when there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, or any other persons having an interest in obtaining the waiver. See 4 C.F.R. § 91.5(c).

Where an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action, he is not without fault and waiver will be denied. See Roosevelt W. Royals, B-188822, June 1, 1977. An employee has the responsibility to verify the information provided on his payroll change slips or Leave and Earning Statements, and where a reasonable man would have made inquiry but the employee did not, then he is not free from fault and the claim may not be waived. National Treasury Employees Union and U.S. Customs Service, 58 Comp. Gen. 721, 723 (1979); John J. Doyle, B-191295, July 7, 1978; Simon B. Guedea, B-189385, August 10, 1977.

In the instant case, we believe that Mr. Jones had a duty to inquire as to the correctness of the salary payment for the pay period after he retired, especially in light of the fact that his Earnings and Leave Statement which accompanied that payment clearly showed that \$1,364.80 represented current earnings for 80 hours for the pay period ending March 13, 1976. Even though that payment was combined in the same check with the payment of \$4,930.34 for accrued annual leave, the two items were clearly identified and explained in the Earnings and Leave Statement. Since Mr. Jones failed to inquire about the correctness of the pay he received for the pay period after his retirement, he is not without fault and we decline to grant his request for waiver of collection of that amount.

On the other hand, the payment of \$272.96 for 16 hours of annual leave may be waived. The Earnings and Leave Statement showed an increase of 16 hours annual leave and a decrease of 16 hours sick leave. Therefore, he could reasonably have believed that the payment reflected an expected adjustment in his leave accounts. We find he was not at fault in accepting this check without further inquiry.

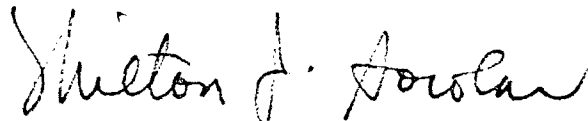
Mr. Jones' next contention is that he is liable only for the net amount rather than the gross amount of the overpayment. Although an employee may not directly receive all monies earned, the withholding of Federal income tax or other amounts is made on behalf of the employee and does not alter the amount of an indebtedness. See Saburo Nishikawa, B-190531, April 3, 1978. Since the matter of an individual's income tax liability is under the jurisdiction of the Internal Revenue Service, Mr. Jones should discuss the matter with the IRS office which services the area in which he resides.

As to Mr. Jones' final contention that no interest may be charged on the overpayment, our decision in 59 Comp. Gen. 359 (1980) stated that, while there is no general statutory provision authorizing agencies to assess interest on delinquent accounts, the courts have recognized

the right to assess interest as a measure of damages for delay in payment of an obligation. Accordingly, our decision held that agencies may charge interest on overdue accounts, but only when (1) the rate of interest is not so high as to constitute a penalty, (2) the interest is assessed only after proper notice of the debt (including intent to charge interest) is given, and (3) the debt itself is liquidated. In this regard, § 102.2 of the the Federal Claims Collection Standards, 4 C.F.R. § 102.2 (1980) requires agencies to make written demands upon debtors which shall include applicable interest requirements. See also § 8020.20b of the Department of the Treasury Cash Management Regulations (Treasury Fiscal Requirements Manual).

Since it is clear from the record that DOE did not follow the appropriate notice requirements, we agree with Mr. Jones' contention that no interest may be assessed on the overpayment to the date of this decision. If the remaining debt is not promptly paid, DOE could of course assess interest charges provided it follows the requirements described above.

Accordingly, the determination of our Claims Division insofar as it denied the request for waiver of \$1,364.80 is sustained, but no interest may be collected on this amount. The request for waiver of \$272.96 is hereby granted.



Acting Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

In Reply
Refer to: B-202136(JLM)

July 20, 1981

Honorable John J. Duncan
House of Representatives

Dear Mr. Duncan:

We refer to your letter of January 23, 1981, on behalf of Mr. Mark F. Jones.

By our decision, B-202136, dated today, copy enclosed, we have denied Mr. Jones' request for waiver of an overpayment of \$1,364.80, but we have disallowed the Department of Energy's attempt to assess interest on this overpayment because proper notice procedures were not followed. We have granted his request for waiver of another overpayment of \$272.96.

We trust the foregoing is responsive to your inquiry.

Sincerely yours,

A handwritten signature in cursive script, reading "Milton J. Aroian", is written over the typed name.

Acting Comptroller General
of the United States

Enclosure

Memorandum

JUL 20 1981

TO : Associate Director, AFMD - Claims Group (Rm. 5858)

FROM : MILTON J. SOCOLAR
Acting Comptroller General

SUBJECT: Mark F. Jones, Request for Waiver - B-202136-O.M.

Returned herewith is your file, Z-2825732-121. By decision of today, B-202136, we have sustained your action insofar as it denied the request for waiver of \$1,364.80, but we held no interest may be collected on this amount. We have granted Mr. Jones' request for waiver of \$272.96.

Attachments



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

In Reply
Refer to: B-202136(JLM)

July 20, 1981

Honorable Howard H. Baker, Jr.
United States Senate

Dear Senator Baker:

We refer to your letter of March 2, 1981, on behalf of Mr. Mark F. Jones.

By our decision, B-202136, dated today, copy enclosed, we have denied Mr. Jones' request for waiver of an overpayment of \$1,364.80, but we have disallowed the Department of Energy's attempt to assess interest on this overpayment because proper notice procedures were not followed. We have granted his request for waiver of another overpayment of \$272.96.

We trust the foregoing is responsive to your inquiry.

Sincerely yours,

A handwritten signature in cursive script, reading "Milton J. Fowler", is written over the typed name.

Acting Comptroller General
of the United States

Enclosure